

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

David Kempen,
Appellant,

v.

City of Davenport Board of Review,
Appellee.

ORDER

Docket No. 13-103-0901
Parcel No. D0058-31

On January 14, 2014, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant David Kempen was self-represented. City Attorney Tom Warner is counsel for the Board of Review. Both parties participated by phone. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

David Kempen is the owner of property located at 1909 Lorton Avenue, Davenport, Iowa. The real estate was classified residential on the January 1, 2013, assessment and valued at \$158,810, representing \$30,000 in land value and \$128,810 in improvement value.

Kempen protested to the Board of Review claiming the property was inequitably assessed and was assessed for more than authorized by law under Iowa Code sections 441.37(1)(a)(1) & (2). He asserted the correct value was \$130,000. The Board denied the protest.

Kempen then appealed to this Board reasserting his claims.

The property record card indicates the subject is a brick one-story, two-family duplex built in 1958. It has 2416 square feet of above-grade living area and a full, unfinished basement. It also has three small concrete stoops, two small open porches, and a 484-square-foot detached brick garage. The site is 0.207 acres.

Kempen testified that he purchased the subject property as part of a 1031 tax deferred exchange.

Generally, if business or investment property is exchanged solely for business or investment property of a like-kind, no gain or loss is recognized under Internal Revenue Code section 1031. 26 U.S.C. § 1031.

He submitted Exhibit 3, which are purchase agreements of multiple other duplex properties that were part of the 1031 exchange. Kempen explained he purchased the subject duplex for more than market value in exchange for the seller purchasing six other duplex properties from Kempen for a total price of \$711,000. (Exhibit 4 p. 2). He further commented that if he were purchasing the subject as part of a normal, arm's-length transaction he would not have paid \$159,000 for the property. But, he was willing to pay more than market for the subject property because he felt he was getting a good deal on the sale of six other duplex properties.

Kempen submitted a total of seven properties he considers comparable for an equity claim. (Exhibits 5-7). The following chart summarized his equity comparables.

| Address | Year Built | Gross Living Area (GLA) | 2013 AV | Sale Date | Sale Price |
|--------------------|------------|-------------------------|-----------|-----------|------------|
| Subject | 1958 | 2416 | \$158,810 | Jan-13 | \$159,000 |
| 203 E 30th St | 1950 | 2089 | \$123,760 | N/A | N/A |
| 1735 Wilkes Ave | 1941 | 1907 | \$98,850 | N/A | N/A |
| 907 W Lombard St | 1940 | 2778 | \$116,580 | N/A | N/A |
| 326 N Pine St | 1947 | 2951 | \$107,800 | N/A | N/A |
| 203 E 30th Street | 1950 | 2089 | \$123,760 | N/A | N/A |
| 4519 N Lincoln Ave | 1962 | 2342 | \$133,400 | N/A | N/A |
| 1825 Duggleby St | 1967 | 2048 | \$128,750 | Nov-12 | \$ 128,000 |

First, we note an equity analysis typically compares prior year sale prices (2012 sales) or established market values to the current year's assessment (2013 assessment) to determine the assessment/sales ratio. Only one of the properties Kempen submitted recently sold. The property at

1620 N Pine Street sold in November 2012 for \$128,000 indicating an assessment/sale ratio of 1.01. A ratio of 1.00 suggests the assessment is at fair market value.

We understand Kempen's concern regarding his assessment when seven other side-by-side duplex properties, built in the same general period as his property with generally the same GLA, have assessments that are significantly lower than his property's. However, more than one sale is required to prove his property assessment is not equitable. Further, he did not assert different assessing methods were used to value the property.

Kempen also provided an analysis he completed of sales from the City of Davenport Assessor's web site. (Exhibit 4). To complete his analysis he searched for two-family properties built between 1900 and 1979 that sold within the last three years. He attached the three-page summary of results based on those criteria. The following chart summarizes the most recent sales transactions based on his search criteria. The chart outlines five separate transactions, which included fifteen total parcels.

| Address | Sale Price | Sale Date | Assessed Value |
|--------------------|------------|-----------|----------------|
| 5428 N Division St | \$711,000 | 1/31/2013 | \$102,030 |
| 5420 N Division St | \$711,000 | 1/31/2013 | \$105,940 |
| 5408 N Division St | \$711,000 | 1/31/2013 | \$105,060 |
| 5402 N Division St | \$711,000 | 1/31/2013 | \$102,030 |
| 5332 N Division St | \$711,000 | 1/31/2013 | \$110,100 |
| 5310 N Division St | \$711,000 | 1/31/2013 | \$105,330 |
| 3320 W 42nd St | \$520,000 | 9/12/2013 | \$109,920 |
| 3321 W 42nd St | \$520,000 | 9/12/2013 | \$112,390 |
| 3407 W 42nd St | \$520,000 | 9/12/2013 | \$107,890 |
| 3419 W 42nd St | \$520,000 | 9/12/2013 | \$107,890 |
| 1930 W 75th Pl | \$242,500 | 10/8/2013 | \$82,760 |
| 1924 W 75th Pl | \$242,500 | 10/8/2013 | \$82,140 |
| 1916 W 75th Pl | \$242,500 | 10/8/2013 | \$83,050 |
| 1909 Lorton Ave | 159,000 | 1/31/2013 | \$158,810 |
| 1025 W Lombard St | \$135,000 | 8/30/2013 | \$133,660 |

The properties listed on N Division Street are those Kempen sold as part of the 1031 exchange. The properties on W 42nd Street sold for a total price of \$520,000. The properties on W 75th Place

sold for a total price of \$242,500. The subject property on Lorton Avenue sold for \$159,000. The remaining two-and-a-half page results summary, which is not included in the chart, lists seventy duplex properties that have transferred in the last three years. Of those, thirty-seven properties had sales prices between \$22,500 and \$135,000. The remaining properties listed \$0 as the sales price. Although these sales are unadjusted for differences, it appears to demonstrate the top end of the duplex market in the City of Davenport, over the last three years, has not been greater than \$135,000 with Kempen's purchase of the subject property being an outlier.

Kempen also submitted an appraisal of the subject property, completed by Andy Black and Corey B. Ellis of Suburban Valuation, Inc., Rock Island, Illinois. The appraisal has an effective date of November 5, 2012, and concludes an opinion of value of \$130,000. The sales comparison approach and income approach to value were developed.

Black and Ellis reported the subject property had a pending sale price of \$150,000, which they indicate was based on an undated purchase agreement. They selected four sales to complete the sales comparison approach. Three of the comparable properties sold in 2012; and the fourth sale occurred in December 2011. The properties range in sales price from \$107,000 to \$128,500 in arm's-length, conventional, transactions. They were all of similar age and style, and Black and Ellis made minimal adjustments for differences between the comparables and the subject. The adjusted range of value is roughly \$127,000 to \$142,000. Black and Ellis also considered the different units of comparison for rental properties, including the adjusted values on a per-unit, per-room, per-gross building area (GBA), and a per-bedroom basis. The total per-unit values ranged from \$125,000 to \$145,000 (rounded). Reconciling the adjusted values of the comparable properties, along with the adjusted per unit values, Black and Ellis opined a final value for the subject property of \$130,000 by the sales comparison approach.

Black and Ellis also completed an income approach. The income approach for a small-income producing property, it is typically determined using the gross rent multiplier (GRM) method. This requires an opinion of market rent and an opinion of a GRM. The appraisal uses three comparable rentals to determine a total market rent of \$1500 for the subject property. The three sales in the sales comparison analysis indicate a GRM range of 78.71 to 99.53. From within this range, Black and Ellis determined a GRM of 90, which results in a value conclusion by the income approach of \$135,000. Their final opinion of value, reconciling the sales and income approaches is \$130,000.

The Board of Review questioned Kempen regarding the purchase of the subject property. Kempen explained the sale was not a forced sale, but that it was part of a 1031 exchange. Kempen did not consider the purchase of the subject property to be an arm's-length transaction. The Board of Review was of the opinion that the sale was arm's-length. The Board of Review asserted because the prices of the properties were "negotiated" and the buyer and seller were unrelated, it reflected a normal transaction. We disagree. It seems clear that the negotiations were based on tax benefits to the buyer and seller that may have affected the price of the property. Further, multiple properties were included in the exchange. We find it is typical for purchases of more than one property to have discounts. Further, we note that the sale of the subject does not conclusively establish its market value under Iowa law.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only

those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). However, new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). "Market value" essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property shall be one hundred percent of its actual value. § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 257 Iowa 575, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

"(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination."

Id. at 711. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires

assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

Kempen offered for seven equity comparables, however only one recently sold. An equity analysis under *Maxwell* requires more than one comparable property as well as evidence of the subject property's actual value. The Iowa Supreme Court has interpreted "representative number of comparable properties" to be more than one property. *Maxwell v. Shiver*, 257 Iowa 575, 581, 133 N.W.2d 709, 712 (1965). This "statutory requirement is both a jurisdictional prerequisite and an evidentiary requirement for bringing a claim of inequitable or discriminatory assessment before the board." *Montgomery Ward Dev. Corp. by Ad Valorem Tax, Inc. v. Cedar Rapids Bd. of Review*, 488 N.W.2d 436, 441 (Iowa 1992). Furthermore, the word "shall" as used in the statute makes the listing of comparable properties mandatory as failing to do so would "directly frustrate[] the sole function of the requirement, which is to enable the board to make a preliminary determination on the matter of equitability of assessment." *Id.* Additionally, as previously noted, 2012 sales would need to be compared to 2013 assessments to determine an assessment/sales ratio. Finally, Kempen did not assert different assessing methods were used to value the property. Thus, his evidence did not prove inequity under either legal test.

In an appeal alleging the property is assessed for more than the value authorized by law under section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Kempen purchased the subject property in January 2013 for \$159,000, as part of a 1031 tax exchange. He testified that he was willing to pay more than market value for the subject property because he was selling six other duplex properties to the same party, and he believed he was getting a better deal on those properties. Despite the fact that the sale prices were negotiated and the parties

were unrelated, we find the “packaging” of the properties, as well as the sales being for a 1031 exchange, results in the sale being abnormal or not representative of a market value transaction. Although the sale of the subject property may be an abnormal transaction, Kempen submitted an appraisal valuing the subject property at \$130,000 as of November 2012. The appraisal determined a value using both the sales comparison and income approaches to value. We find the sales Black and Ellis used in the appraisal are similar to the subject and were reasonably adjusted with adequate comment and support for their conclusion of value. The appraisal is the best evidence in the record of the subject property’s fair market value as of January 1, 2013.

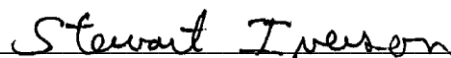
THE APPEAL BOARD ORDERS the assessment of Kempen’s property located at 1909 Lorton Avenue, Davenport, Iowa, is modified to a total value of \$130,000, as of January 1, 2013.

The Secretary of the Property Assessment Appeal Board shall mail a copy of this Order to the Scott County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 17th day of February 2014.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

Copies to:
David Kempen
11664 131st Street Court
Davenport, Iowa 52804
APPELLANT

Tom Warner, City Attorney
226 W 4th Street
Room 303
Davenport, Iowa 52801
ATTORNEY FOR APPELLEE

Roxanna Mortiz
Scott County Auditor
600 W 4th Street
Davenport, Iowa 52801
AUDITOR